



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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OFFICE OF
ENVIRONMENTAL
CLEANUP

December 12, 2014

Mr. E. Gilbert Leon Jr.
Earle M. Jorgensen Company
10650 South Alameda
Lynwood, California 90262

Ms. Amy Essig Desai
Farallon Consulting, LLC
975 5th Ave Northwest
Issaquah, Washington 98027

Re: EPA Disapproval of the Jorgensen Forge Early Action Area Removal Action- Pre-Final Certification Inspection Letter Report

Dear Mr. Leon and Ms. Essig Desai:

On November 21, 2014 representatives of EMJ submitted the "Jorgensen Forge Early Action Area Removal Action- Pre-final Certification Inspection Letter Report, U.S. EPA Docket No. CERCLA 10-2013-0032" (Inspection Report) to EPA. The Inspection Report is required under the Settlement Agreement, as described in Appendix A, Statement of Work, and must include: a summary of major results within the Construction Quality Assurance Plan (CQAP), any field changes, and minutes from the Pre-Final Inspection. As further described below, EPA is disapproving this Inspection Report as: the Pre-Final Inspection minutes are not an accurate reflection of the discussion as they occurred between EPA and EMJ's representatives during the pre-final certification inspection; the field change information is incomplete; and the Year 0 surface sediment monitoring within the RAB, identified in the CQAP, was not included in the Inspection Report.

The Inspection Report minutes, captured in pages three through seven of the document, do not accurately reflect the conversation as they occurred between EPA and EMJ's representatives. The minutes include extensive statements about interpretations of purported past communications with EPA over the EE/CA, and its relationship to the removal action, that were not discussed in the detail and depth provided in the Inspection Report. However, the minutes omit the discussion EPA raised during the Inspection about the requirements under the Settlement Agreement, which implements the Action Memorandum, to remove all contaminated sediments above the Removal Action Levels (RvALs). The minutes significantly misrepresent EPA's discussion of this issue specific to the results of the Z-layer samples of the post-dredge sediments. During the meeting, EPA intentionally notified EMJ's representatives that current Z-layer sample data do not meet the RvALs identified in the Action Memorandum and the Settlement Agreement; that this was very concerning to EPA; and accordingly, EPA would be following up with EMJ in regards to completion of the Removal Action.

The EPA is taking the opportunity to clarify some of the specific details within the inaccurate Inspection Report. The current Inspection Report repeatedly, and inappropriately, cites the EE/CA as the authority on RvALs. However, the EE/CA is an evaluation of the removal action alternatives that is used to inform the final selected removal action. The document that defines EPA's final selected removal action is the Action Memorandum, which evaluated, but did not incorporate the EE/CA as a whole. It is for this reason that the Settlement Agreement incorporates the Action Memorandum, not the EE/CA, detailing the removal action to be performed by EMJ.

In this regard, the Inspection Report fails to recognize that it is the Action Memorandum which establishes the RvALs for contaminants of concern, including PCBs. The Inspection Report does not cite what the Action Memorandum clearly states: that the RvAL for PCBs is 12 ppm OC (Section V.A.4); that the removal action "would not leave any PCBs in the subsurface above 12 ppm OC-normalized" (Section III.3); and that, after confirmation sampling of newly exposed post-dredge sediments, "sediment dredging will continue" until the RvALs are reached (Section V.A.1).

While the Inspection Report fails to recognize the role of the Action Memorandum in the Removal Action, documents previously submitted by EMJ to EPA do. For example, the CQAP, Appendix D of the Removal Design (RvD), states that "cleanup will be conducted as a non-time critical removal action (NTCRA) in accordance with EPA's selected cleanup alternative documented in the *Action Memorandum...*" Furthermore, these documents, developed by EMJ and approved by EPA per the Settlement Agreement, also recognize that the Action Memorandum defines the RvAL of 12 ppm OC for PCBs. For example, this requirement is affirmed in the RvD (Section 2.1.2.1), where it is stated that "sediments containing total PCB concentrations greater than the PCB RvAL (12 mg/kg OC) shall be removed within the EPA-approved RAB," and in the Removal Action Work Plan (RAWP) (Section 2.2), where it stated that "EPA directed the use of the SQS for total PCBs (12 mg/kg of normalized organic carbon) as the appropriate delineating criterion and the appropriate RvAL for sediment removal and/or shoreline containment in the RAB".

EPA also requires EMJ correct an often misquoted section of the EE/CA wherever it has occurred, including its mischaracterization in the CQAP and Inspection Report. Numerous provisions in the EE/CA, including Sections 1.3.2, 4.1, 6, 6.4.2.1, 6.4.3.1, 7.1.1, 7.1.6 and 7.4.1, identify the goal of removing all sediments containing PCBs above the RvAL of 12 ppm OC. However, EMJ has, and continues to, quote only one statement of the entire EE/CA, found in Sections 1.3.2 and 8.2, which it cites incorrectly:

*Therefore, the results of any post-dredge sampling and analysis would not trigger any further remedial actions unless the area weighted concentrations in the RAB are significantly greater than the total PCB RvAL (**for example**, area weighted averages greater than 20 times the RvAL or 240 milligrams per kilogram normalized for organic carbon [mg/kg OC]).*

EMJ has, and continues to, misquote this statement in the EE/CA to assert that there will be no additional removal action unless the area weighted concentration of PCBs in the post-dredge samples is above 240 mg/kg OC, ignoring the pivotal phrase "for example" in the sentence. The language in the EE/CA merely provides a concept and an example of how the concept could be implemented if it were adopted by EPA. EPA has no record of EMJ submitting technical data demonstrating that PCB material above 240 mg/kg OC remaining on-site post removal action would meet the removal action goals and be

adequately protective of human health and the environment. Furthermore, EPA has no record of an EPA approval of the EE/CA memorializing PCBs at 240 mg/kg OC as a scientifically valid number proven to meet the removal action goals that could safely remain at the site. The only record EPA has of this value is as an example, proposed in the EE/CA, of what may be considered in the context of this removal alternative. Finally, and most importantly, EPA did not incorporate this concept in to the Action Memorandum.

In addition to selectively misquoting the EE/CA statement describe previously, EMJ revises its relevance to the Removal Action in both the CQAP and Inspection Report by stating the following:

*EPA approved (EPA 2011b) the Final EE/CA (Anchor QEA 2011) **condition** that the results of any post-dredge sampling and analysis would not trigger any further remedial actions unless the area weighted concentrations in the RAB are greater than 20 times the RvAL or 240 milligrams per kilogram for organic carbon.*

As discussed previously, the language in the EE/CA did not establish a “condition” to be applied to the removal action; it proposes a concept and includes an example specific to the concern of residual PCBs being detected in the Z-layer samples of the post-dredge sediments.

Regardless of how the aforementioned concept in the EE/CA proposed to consider residual contamination in the Z-layer samples: it was not incorporated in to EPA’s Action Memorandum, the Settlement Agreement, or ever technically demonstrated to meet the removal action goals and be protective of human health and the environment. The RvAL of 12 mg/kg OC for PCBs remains the decision, established in the Action Memorandum, by the authorized EPA official.

Where EMJ misquotes the EE/CA, it often states that EPA agreed to the proposed concept because EPA acknowledged that the removal action activities may result in a thin layer of sediments with residual total PCB concentrations deposited on the final post-dredge surface. While this has been a concern raised by EMJ on numerous occasions, EPA notes that EMJ’s sampling methods identified in the CQAP do not provide a mechanism for differentiating a “thin layer of residual PCBs” from the PCB contaminated sediments that were the subject of the removal action. Consequently, the data that EMJ has provided to date does not differentiate PCB concentrations identified in the Z-layer samples as being from the dredge residuals generated during the dredge activity itself or the underlying subsurface sediments within the 0-12 inch interval of the sample.

In addition to the mischaracterization of the actual discussion as it occurred between EPA and EMJ representatives in the Inspection minutes, EPA is disapproving the Inspection Report for several other reasons. The submitted Inspection Report does not include the complete Field Change forms. Only some of the Field Change documents in the Inspection Report include details as to when and how EPA’s approval was obtained (for example, several list “Rebecca Chu, RPM”- but do not include a date and subsequent documentation demonstrating I approved those requests). This is incredibly concerning given the various alterations to the EPA approved RAWP that occurred throughout the construction activities this summer.

Finally, the CQAP identifies that Year 0 surface sediment monitoring within the RAB, as described in the Operations, Maintenance and Monitoring Plan, will be conducted concurrently with the post-construction perimeter surface sediment sampling. This information is being collected to serve as baseline condition for future long-term monitoring. These data were not provided in the Inspection Report.

The EPA understands and appreciates that EMJ and its representatives have put forth significant effort related to this removal action over many years, and that this current issue is concerning for all parties involved. EPA's responsibility is to ensure that the removal action protects human health and the environment, and the Action Memorandum documents EPA's decision on how that is to be achieved. EPA seeks to work collaboratively with EMJ to address this current issue. Please contact me if you have any further questions.

Sincerely,

Rebecca Chu
Remedial Project Manager

cc: Miles Dryer, Jorgensen Forge Corporation
Ryan Barth, Anchor QEA
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